

COPY

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1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF WESTCHESTER

3 JOSHUA BERNSTEIN,-----x

4 Plaintiff,

5 -against-

6 BAYROCK GROUP LLC,

7 Defendant.

8 Index No. 02579/09

9 -----x

10
11 11 Martine Avenue
12 White Plains, New York

13 March 9, 2010
14 4:10 p.m.

15 Deposition of FELIX H. SATER, held
16 at the Law Offices of Gerry E. Feinberg, pursuant
17 to subpoena and court order, before Barbara
18 Driscoll, a Notary Public of the State of New
19 York.

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21
22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
Ref: 92879B

1 A P P E A R A N C E S: .
2

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7 and

8 FREDERICK M. OBERLANDER, ESQ.

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1213
14 AKERMAN SENTERFITT LLP

15 Attorneys for Defendant

16 335 Madison Avenue, Suite 2600

17 New York, New York 10017-4636

18 BY: MARTIN DOMB, ESQ.
1920
21 ALSO PRESENT:

22 Joshua Bernstein

23 Brian Halberg, Esq.

24 Julius R. Schwarz
25

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2 Q. Were you the chief operating officer?

3 A. Depends on how you look at it.

4 Q. Was there a chief operating officer at
5 Bayrock?

6 A. Officially? I don't know if there was.

7 Q. Who was Tevfik Arif? Was he your boss?

8 A. He was the boss. He was the boss of
9 all bosses.

10 Q. Would you consider him to be the chief
11 operating officer of Bayrock?

12 A. No.

13 Q. Was there a chief operating officer at
14 Bayrock?

15 A. Depends on how you look at it.

16 Q. How do you look at it?

17 A. Depends on the time frame that we are
18 talking about.

19 Q. Was there ever a time frame where there
20 was a chief operating officer?

21 A. Actual position, with a business card
22 and title or de facto chief operating officer
23 because sometimes somebody is the chief operating
24 officer without having that title?

25 Q. To your knowledge, was there any action

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brought in for, but I don't have a recollection of the exact conversation.

Q. Do you have a recollection as to any requirements that Mr. Bernstein made in terms of his compensation?

A. No, specifically, no.

Q. In your initial conversations, did you have any communication to him about what Bayrock might be offering in terms of compensation?

A. I don't remember that.

Q. Did there come a time when Bayrock hired him?

A. Yes.

Q. Who was responsible for making the determination to actually hire him?

A. Well, the final approval was Tcvfik, but I believe mine and Jody Kriss's opinion on his employment were taken into account when he was hired. In fact, I know that was the case.

Q. When he was hired, do you have a recollection of what his compensation was at the time he was hired?

A. No.

Q. Do you have a recollection in terms of

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2 the type of compensation he was promised at that
3 time, salary, bonus, mixture of the two?

4 A. I don't remember the specifics.

5 Q. Do you have a recollection of having
6 discussion with him about bonuses when he was
7 first hired, about the possibility of bonus as
8 part of his compensation?

9 A. I am sure that it is a possibility that
10 we had conversations about bonuses, of course.

11 Q. As we sit here today, at least at the
12 early stage of his employment, you have no
13 recollection of any conversations you had with him
14 about that?

15 A. I don't have any specific memory of
16 specific conversations, no.

17 Q. I assume there came a point in time
18 when he started working for the company?

19 A. Yes.

20 Q. What was his position at the company?

21 A. He was an analyst.

22 Q. Did he work for you?

23 A. Most of his work was under my
24 supervision.

25 Q. What did his job as an analyst entail?

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2 A. Pretty much to work on the things that
3 I directed him on. A lot of it was research; a
4 lot of it was looking at transactions; some
5 financial calculations, things of that nature.

6 Q. His first full year of employment was
7 in 2007; does that sound right?

8 A. It doesn't sound wrong.

9 Q. Did there come a time in 2007 when his
10 compensation changed?

11 A. I don't remember.

12 Q. Do you remember anything about the
13 compensation that Mr. Bernstein was supposed to be
14 paid or did get paid?

15 MR. DOMB: Objection to the form.

16 Q. As we sit here today, do you have any
17 recollection at all about anything to do with
18 Mr. Bernstein's compensation?

19 A. There were many conversations about his
20 compensation. Which specific one? No, I don't
21 remember.

22 Q. Do you have any recollection of any
23 conversations you had with him about how much
24 annual salary he would be getting?

25 A. I don't specifically remember.

1 SATER

2 A. Today especially.

3 Q. I imagine.

4 Did Bayrock have any procedures in
5 place while you were employed there relating to
6 changes in employee compensation? In other words,
7 did they have a practice where in order for salary
8 -- for an employee to get an increase in their
9 compensation, it went through a review process of
10 any nature of any formal procedure?

11 A. I think so, but I don't remember.

12 Q. Did you have it within your power to
13 authorize a salary increase for an employee?

14 A. On my own?

15 Q. Yes.

16 A. No.

17 Q. Did you have the power to or from time
18 to time were you called upon to make
19 recommendations with respect to any compensation
20 changes?

21 A. Yes.

22 Q. Is it fair to say that your
23 recommendations would have significant import with
24 the person who would make that determination?

25 A. Yes.

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Q. That would be Tefvik?

A. Yes.

Q. Did you ever make a recommendation to him about a change in compensation that was rejected?

MR. DOMB: For any person?

MR. FEINBERG: Yes.

A. I think so, yes, but I don't remember specifically, but yes.

Q. Did you ever make a recommendation relating to Mr. Bernstein that was rejected?

A. I don't remember. May have.

Q. But nothing --

A. Nothing that sticks out in my mind, no.

Q. Did you ever have any conversation with Mr. Bernstein where you specifically promised him that he would get a particular bonus? Let's start out with a deal bonus for any particular transaction he worked on.

A. I am sure I did, but I don't have any recollection.

Q. Did there ever come a time that you recollect that the transaction took place and Mr. Bernstein made a request to receive the bonus

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2 Q. As a person, did you get along with
3 him?

4 A. Yes.

5 Q. What was your opinion of him in terms
6 of the work he was doing for Bayrock?

7 A. I thought he sucked.

8 Q. You thought he sucked?

9 A. Yeah.

10 Q. Did you ever tell that to him?

11 A. Yes.

12 Q. Did you ever tell it to other people?

13 A. Yes..

14 Q. Were you ever asked or called upon to
15 provide information with respect to a bonus for
16 him?

17 A. I am sure I was.

18 Q. Did you provide information with
19 respect to that bonus?

20 A. I am sure I did.

21 Q. Do you remember what you provided; what
22 you said?

23 A. No.

24 Q. Did you ever have a conversation with
25 Mr. Schwarz about the amount of bonus that

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2 Mr. Bernstein should be getting at the end of
3 2007?

4 A. I am sure I did.

5 Q. Do you remember what you said to him?

6 A. No.

7 Q. Do you remember if you said anything to
8 him?

9 A. Is that a trick question?

10 Q. No. Is there anything, as we sit here
11 today, that you have a recollection of saying to
12 Julius Schwarz about what Mr. Bernstein should or
13 should not get in terms of his annual bonus?

14 A. We had many conversations and to
15 specifically remember a specific conversation, I
16 do not, as I sit here today, have a recollection
17 of any specific conversations.

18 Q. How about in sum and substance on the
19 topic of it? Do you have a recollection of any
20 substance of any conversations, whether you
21 remember a specific one or not, about at some
22 point in time Mr. Schwarz came to me saying,
23 Bernstein wanted X, Y and Z and I told him he
24 shouldn't get that much or he told me Bernstein
25 was complaining; anything at all about the topic

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of his annual bonus?

A. I am afraid to answer that.

Q. Because?

A. Because you can keep digging.

Q. Yes or no. Do you have a recollection?

A. Yes.

Q. Can you tell me in sum or substance what you recollect?

A. The sum and substance was discussions of his crappy performance and why is he entitled to a bonus at all.

Q. Was he crappy performance from the beginning of the relationship on? Was his performance always crappy?

A. Actually or my opinion of it?

Q. Well, I don't know if anything is distinguishable in your mind, but tell me what your opinion is.

A. In the beginning, my opinion was no. My opinion was that he was pretty good. It was everybody else's opinion that he was crappy.

Q. Did your personal opinion change at some point?

A. Yes.

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Q. When was that?

A. I don't remember the exact date but progressively, I changed my opinion about Josh's performance/motivation/ability.

Q. Would that in 2007?

A. Or '08 or '06. I don't remember.

Q. In terms of your change.

A. In terms of -- I don't remember when he started.

Q. Let's assume for the purposes of the question, he started in November of 2006, and he ended in September of 2008.

A. So two years.

Q. Approximately two years.

A. Somewhere mid to last third of the relationship is probably when my opinion of his abilities and performance changed.

Q. What was there that happened that you can remember that caused you to change your opinion?

A. Just rubbed everybody the wrong way, everybody in the firm.

Q. Well, aside from interpersonal relations and rubbing --

1 SATER

2 A. I meant business wise.

3 Q. In what sense when you say --

4 A. He would be asked by -- he would be
5 told by people what needed to be done and he
6 wouldn't do it.

7 Q. Anything else?

8 A. A lot -- performance wise, when you
9 don't do your job as you're instructed to do, I
10 would say it is pretty bad.

11 Q. Did you personally experience this
12 yourself?

13 A. Yes.

14 Q. When this started to happen, did you
15 send any communications, e-mails, anything else --

16 A. I may have. I don't remember. It
17 could have been verbal. It could have been
18 e-mail. I could have not sent it. I don't
19 remember.

20 MR. FEINBERG: Let's mark for
21 identification as Plaintiff's Exhibit 32, this
22 document.

23 (Plaintiff's Exhibit 32, e-mail from
24 Mr. Bernstein to you, September of 2007,
25 marked for identification, as of this date.)

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reimbursement, I believe he may have been reimbursed for some class or something that he may have taken. So I remember this and I disagree with it.

Q. Did you have a conversation with Mr. Schwarz about this e-mail after Mr. Schwarz got the e-mail?

A. I may have. I don't remember.

Q. Did you direct Mr. Bernstein to send this e-mail?

A. I may have. I don't remember.

Q. Did you ever request Mr. Bernstein to install any kind of special software on Bayrock's computer system?

A. No.

Q. None at all, ever?

A. None at all, ever.

Q. I will show you what was marked as Exhibit 17, but I will read it. It is an e-mail. It says from Felix Sater to Chris at GreenhouseIT.com, authorization. Per my request, Josh has contacted you regarding special software for the office. This software is requested and authorized by me. Please install as soon as

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possible.

Does that refresh your recollection?

A. The e-mail doesn't, but I believe it refreshes my recollection as to what I instructed him to do.

Q. What did you instruct him to do?

A. I instructed him to take a hard drive that I provided and back up on that hard drive all of the files off the Bayrock server. That may have required some software installation and that is why I may have sent something to Greenhouse authorizing it, but I remember instructing Josh to take all the files off the Bayrock server on to a hard drive for myself as back-up purposes.

Q. When did you instruct him to do that?

A. I don't remember.

Q. Did he do that?

A. I believe he did.

Q. Did he go out and purchase a hard drive to do this?

A. I may have bought it or I may have instructed him to buy it.

Q. Do you know where it is now?

A. No, I don't remember.

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2 Q. Did you ever make a request to get it
3 back?

4 A. I don't remember. I may have.

5 Q. Other than his doing that, you have no
6 recollection of requesting him to do anything else
7 in terms of an installation of any special
8 software?

9 A. I may have, but I don't remember.

10 Q. When this e-mail says he is authorized
11 to install this, it is possible you may have
12 requested him to do it, but you can't remember?

13 A. No. I remember I requested him to back
14 up the files on the hard drive. Was there other
15 software? I don't remember.

16 Q. But it is possible?

17 A. Anything is possible.

18 Q. Not anything is possible.

19 A. Anything is possible. Think positive.

20 Q. The question is whether this is
21 possible.

22 A. Anything is possible.

23 MR. DOMB: Objection. Too vague.

24 Q. There is nothing that leads you to
25 believe that you never asked him, as we sit here

1 SATER

2 today, correct?

3 A. Correct.

4 Q. Did there ever come a time when you
5 asked that Mr. Bernstein's payroll be
6 retroactively taken off the system?

7 A. I don't remember.

8 Q. In or about September of 2008?

9 A. I don't remember.

10 Q. Were you having discussions with
11 Mr. Bernstein in or about 2008 about his
12 termination?

13 A. I am sure I was. I don't remember.

14 Q. Was there an expense practice or
15 procedure at Bayrock while you were there?

16 A. I don't know if you would call it
17 practice or procedure. We pretty much submitted
18 them and I don't think there was ever a real
19 enforced policy or -- the place didn't exactly run
20 like Google. We didn't have any fuze ball tables.

21 Q. Was there any policy that existed in
22 Bayrock with respect to how your expenses were
23 handled?

24 A. No.

25 Q. You could base --

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2 didn't want anymore?

3 A. I don't believe so. I may have, but I
4 don't remember if I gave it to him or not.

5 Q. But you remember giving him old suits
6 you had that you didn't want anymore?

7 A. I think I gave him some clothing. It
8 could have been a suit, handkerchief.

9 Q. Did you ever promise to give him a
10 watch -- get him a watch as part of his
11 compensation?

12 A. I don't remember.

13 Q. Is it possible you did, but you don't
14 remember?

15 A. I may have even offered to buy him
16 earrings for all I remember.

17 Q. We will get to the earrings later. For
18 the moment, a watch.

19 A. Possible, but I don't remember.

20 Q. How about a pen?

21 A. Possible, but I don't remember.

22 Q. How about a membership in a salon, the
23 Truman's?

24 Do you know who Truman's is?

25 A. Yes, I remember.

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2 Q. What do you remember about that?

3 A. That we must have had 27 conversations
4 about his personal hygiene needs at that specific
5 hair club for men thing.

6 Q. Was there ever a promise or any
7 representation made relating to that or paying for
8 anything relating to that?

9 A. He was such a pain in the ass that I am
10 sure I told him, yes, just to get him out of my
11 hair.

12 Q. Did there a come when you asked
13 Mr. Bernstein to do some work for Bayrock which
14 resulted in his having to cancel a planned
15 vacation that he had been -- or that he had
16 booked?

17 A. You're kidding?

18 Q. I don't kid.

19 A. You kid.

20 Q. Not now!

21 A. Look at the questions.

22 Q. I asked you a question.

23 A. Possible. I don't remember.

24 Q. Nothing sticks out in your head as we
25 speak here today?

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2 these numbers are not good. If the market had
3 continued going the way it was going, 400 million
4 could have been possible; could have been possible
5 anything; good, bad or in the middle.

6 When you ask me if double that was
7 wildly optimistic, I don't know. It is wildly
8 optimistic that the Yankees could have won as many
9 pennants as they did but they did.

10 MR. DOMB: I have a few questions.

11 EXAMINATION BY

12 MR. DOMB:

13 Q. Did you have authority at Bayrock to
14 promise employees cash bonuses or cash
15 compensation without the authority of Tevfik Arif?

16 A. No, I did not.

17 Q. Did you ever discuss that with Josh
18 Bernstein?

19 A. Yes, I did.

20 Q. What did you tell him?

21 A. Generally that when asked about one
22 bonus or another, unless it was the haircutting
23 club thing which was too embarrassing by me to
24 even tell Tevfik Arif about, but it was explained
25 that any bonus that we would discuss that would --

1 SATER

2 was presented to Tevfik, and he generally takes a
3 lot of weight to the things I say about bonuses
4 and hopefully I can get it for him.

5 Q. Did you ever tell Josh what you just
6 said?

7 A. On numerous occasions Josh heard from
8 me, I will speak to Tevfik about it; I will try to
9 get it for you or something along these lines.
10 Absolutely.

11 Q. Did Mr. Tevfik Arif ever authorize any
12 cash bonus or payment compensation to Josh
13 Bernstein that the company did not make to him, to
14 your knowledge?

15 A. I don't remember. I don't think so. I
16 believe we made good on all of our promises,
17 except I did cheat him out of the hair club thing.
18 The shave and haircut thing, I am guilty. My
19 fault. I apologize. I am ready to pay for the
20 haircut right now.

21 Q. Were you involved in a Loehmann's
22 transaction where I believe it was a mall was sold
23 in Brooklyn on behalf of some company in some way
24 related to Bayrock?

25 A. Yes.

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Q. You were involved in it. Did Josh Bernstein help you in that transaction?

A. Yes.

Q. Did he receive a bonus?

A. Yes.

Q. Do you remember what the amount was?

A. I believe it was 100,000.

Q. Mr. Bernstein has testified that you promised him that it would be 200,000, not 100,000. Do you have any information on that?

A. He is lying.

Q. Mr. Bernstein testified that Mr. Arif told Mr. Bernstein that Mr. Bernstein would be entitled to compensation on that transaction equivalent to what the broker on the deal made. Do you remember who the broker on the deal was?

A. No.

Q. GFI was it; does that ring any bells?

A. I don't remember.

Q. Do you know who introduced that broker to the transaction?

A. Maybe Josh.

Q. Do you remember that that broker made a broker's fee? Do you remember what that amount

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was?

A. I don't remember.

Q. Josh Bernstein said it was \$1 million.

Do you have any information on that?

A. It is possible. I don't remember.

Q. Josh Bernstein testified under oath, that he believed that Mr. Arif promised him, Mr. Bernstein, that he would pay him \$1 million for Mr. Bernstein's role in that transaction. Do you have any information on that?

A. I am certain he is lying.

Q. Did you ever hear of any such promise?

A. No. Josh Bernstein negotiated with me, which I got okayed with Tefvik Arif, his compensation on the transaction. He gladly agreed to it, gladly accepted it and now is coming up with, excuse my language, happy horse shit, just like Mr. Kriss who also received a bonus that he was happy with; was the one who asked for that amount and then a year or two later came up with the idea that he is not happy with it.

So the answer is no. Josh Bernstein negotiated to receive \$100,000. He received that \$100,000. No other promises were made to him by

1 SATER

2 myself for sure. I cannot speak for anyone else
3 at the firm, but given the nature of the
4 relationship and his employment and my position
5 there, a promise like that would have been relayed
6 to me by someone, guaranteed. Josh would have ran
7 in in about 13 seconds and said, Tefvik promised
8 me a million bucks, please sign this. It never
9 happened. It is bullshit, bullshit, bullshit.

10 MR. DOMB: No further questions.

11 (Time noted: 5:35 p.m.)
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